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In the

Supreme Court of the United States

October Term 1976

No. 76-1478

H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, DUPONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & CO., CHARLESTON INVESTMENT COMPANY, E. D. SYSTEMS CORPORATION, DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON AND CHARLES W. COX,

Petitioners,

—against—

WINTHROP J. ALLEGAERT, AS TRUSTEE OF DUPONT WALSTON INCORPORATED,

Respondent,

—and—

NEW YORK STOCK EXCHANGE, INC., DOUGLAS E. DETATA, JOHN J. DOUGHTY, ALLAN BLAIR, AND D. TIPP CULLEN,

Additional Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF RESPONDENT WINTHROP J. ALLEGAERT, AS TRUSTEE OF duPONT WALSTON INCORPORATED, IN OPPOSITION

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	2
DISCUSSION	6
1. There Is No Conflict With Any Decision Of This Court	7
2. There Is No Conflict With A Decision Of Another Circuit	11
3. No Significant Issue Of Bankruptcy Law Was Decided Below	12
CONCLUSION	15

TABLE OF AUTHORITIES

	Page
Cases:	
A. & E. Plastic Pak Co. v. *Monsanto Co.*, 396 F.2d 710 (9th Cir. 1968)	8
Alexander v. *Gardner-Denver Co.*, 415 U.S. 36 (1974)	7, 9, 10
Allegaert v. *Mendiburu*, F-75-36-Civil (E.D. Cal. 1975)	13
American Safety Equipment Corp. v. *J. P. Maguire & Co.*, 391 F.2d 821 (2d Cir. 1968)	7-8
Axelrod & Co. v. *Kordich, Victor & Neufeld*, 451 F.2d 838 (2d Cir. 1971)	11
Bank of Marin v. *England*, 385 U.S. 99 (1966)	14
Beckman Instruments, Inc. v. *Technical Development Corp.*, 433 F.2d 55 (7th Cir. 1970), *cert. denied*, 401 U.S. 976 (1971)	8
Bernhardt v. *Polygraphic Co.*, 350 U.S. 198 (1956)	7, 8
Brown v. *Gilligan, Will & Co.*, 287 F. Supp. 766 (S.D.N.Y. 1968)	11
Buttrey v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 410 F.2d 135 (7th Cir.), *cert. denied*, 396 U.S. 838 (1969)	14
Cobb v. *Lewis*, 488 F.2d 41 (5th Cir. 1974)	8
Coenen v. *R. W. Pressprich & Co.*, 453 F.2d 1209 (2d Cir.), *cert. denied*, 406 U.S. 949 (1972)	11
Greater Continental Corp. v. *Schechter*, 422 F.2d 1100 (2d Cir. 1970)	7
Gutor International AG v. *Raymond Packer Co.*, 493 F.2d 938 (1st Cir. 1974)	7
Helfenbein v. *International Industries, Inc.*, 438 F.2d 1068 (8th Cir.), *cert. denied*, 404 U.S. 872 (1971)	8
In re Muskegon Motor Specialties Co., 313 F.2d 841 (6th Cir.), *cert. denied*, 375 U.S. 832 (1963)	13
In re Revenue Properties Litigation Cases, 451 F.2d 310 (1st Cir. 1971)	11, 12

	Page
Johnson v. *England*, 356 F.2d 44 (9th Cir.), *cert. denied*, 384 U.S. 961 (1966)	13, 14
Knickerbocker Agency v. *Holz*, 4 N.Y.2d 245, 173 N.Y.S.2d 602, 149 N.E.2d 885 (1958)	13
L. O. Koven & Brother, Inc. v. *Steelworkers' Local 5767*, 381 F.2d 196 (3d Cir. 1967)	8
Local 30, ILGWU v. *Hers Apparel Industries, Inc.*, 76 CCH Lab. Cas. ¶10,733 (S.D.N.Y. 1975)	13
Merrill Lynch, Pierce, Fenner & Smith, Inc. v. *Ware*, 414 U.S. 117 (1973)	7, 12
Prima Paint Corp. v. *Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967)	7, 8, 10
Scherk v. *Alberto-Culver Co.*, 417 U.S. 506 (1974)	10
Schneider v. *O'Neal*, 243 F.2d 914 (8th Cir. 1957)	14
Truck Driver's Local 807 v. *Bohack Corp.*, 541 F.2d 312 (2d Cir. 1976)	14
U.S. Bulk Carriers, Inc. v. *Arguelles*, 400 U.S. 351 (1971)	7
Wilko v. *Swan*, 346 U.S. 427 (1953)	6, 7, 8, 9, 10
Statutes and Rules:	
Bankruptcy Act	
Section 60, 11U.S.C. § 96	2, 13, 14
Section 67, 11 U.S.C. § 107	2, 13, 14
Section 70, 11 U.S.C. § 110	2, 13, 14
Section 70b, 11 U.S.C. § 110(b)	13, 14
Section 313(1), 11 U.S.C. § 713(1)	14
Bankruptcy Rules	
Bankruptcy Rule 607	14
Bankruptcy Rule 11-53	14
Securities Act of 1933	
Section 14, 15 U.S.C. § 77n	8
Securities Exchange Act of 1934	
Section 28(b), 15 U.S.C. § 78bb(b)	6
Section 29(a), 15 U.S.C. § 78cc(a)	8

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BRIEF OF RESPONDENT WINTHROP J. ALLEGAERT, AS TRUSTEE OF duPONT WALSTON INCORPORATED, IN OPPOSITION

This brief is submitted on behalf of respondent Winthrop J. Allegaert, as Trustee of duPont Walston Incorporated (the "Trustee"), in opposition to the petition of H. Ross Perot and others (the "Perot Group") for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

QUESTIONS PRESENTED

1. Whether a trustee in bankruptcy suing on behalf of creditors pursuant to Sections 60, 67 and 70 of the Bankruptcy Act may be required to arbitrate on the basis of arbitration agreements entered into by the bankrupt?

2. Whether claims asserted by the trustee of a bankrupt stock brokerage firm under the Securities Act of 1933 and the Securities Exchange Act of 1934 may be determined by an arbitrator rather than by a federal court?

STATEMENT OF THE CASE

The petition herein seeks to create issues of national importance where none exists and to conjure up conflicts that are equally illusory. Notwithstanding the notoriety attending the events which gave rise to this action and the importance of the case on the merits, the court below determined only a simple procedural issue: whether a trustee in bankruptcy can be barred from pressing statutory claims under the securities laws and the Bankruptcy Act in federal court on the basis of arbitration agreements he never signed.

This case concerns H. Ross Perot's efforts to extricate himself, at the expense of duPont Walston Incorporated ("Walston") and its creditors, from a disastrous involvement with the brokerage business. Winthrop J. Allegaert, Walston's bankruptcy trustee, has charged Perot and 19 other defendants with responsibility for a complex scheme under which they siphoned off the assets of Walston to duPont Glore Forgan, Incorporated ("DGF Inc."), and caused the liabilities of DGF Inc. to be shifted to Walston, thereby resulting in the bankruptcy of Walston, "one of the most celebrated brokerage house failures in the history of Wall Street" (10a; footnote omitted).

Defendants in the suit include Perot, Electronic Data Systems Corporation ("EDS"), DGF Inc., the New York Stock Exchange, Inc. ("NYSE"), several Perot associates and investment vehicles, and the Walston directors who voted in favor of Perot's scheme. The twenty-four counts of the complaint allege violations of the Securities Act of 1933, the Securities Exchange Act of 1934, the Bankruptcy Act, and various provisions of New York and Delaware law. The prayer for relief seeks actual damages of $45 million from all defendants and punitive damages in a like amount from certain defendants.

The Trustee's detailed complaint (47a-91a), was concisely summarized in the opinion below:

"Perot is the founder and controlling stockholder of EDS, which operates data processing systems for corporate customers. In the early 1970's, Perot invested about $70 million in, and took control of, the brokerage firm later known as DGF Inc. Perot had borrowed most of the money and had pledged EDS stock as collateral, but the value of that stock depended on continued income from EDS's contract with DGF Inc. By spring 1973, however, DGF Inc. was in bad shape; insufficient capital had brought it to the verge of liquidation. That event would have threatened Perot's entire financial empire and to avoid it, Perot came up with the scheme (the Perot Plan) that involved Walston, in which Perot was a minority investor.

"The trustee describes the Perot Plan as a series of unusual transactions by which Walston would assume all front office operations of the two firms and DGF Inc. would assume back office operations. All of the liabilities of DGF Inc.'s failing branch office system would be shifted to Walston, including lease liabilities on many offices, some

already closed. Walston would pay DGF Inc.'s expenses and make a $2 million advance on them. In addition, Perot would exchange his non-voting preferred stock in Walston for a new series of preferred stock with more voting rights than all of Walston's common stock. Thus, the Plan would protect DGF Inc.'s capital against future loss, while Walston would assume immense liabilities.

"According to the trustee, the Perot Plan was railroaded through the Walston Board of Directors in July 1973 by a vote of 10-9, after insufficient notice of the lengthy and complex realignment agreements and at a Sunday Board meeting that lasted until the early hours of Monday morning, during which the Perot representatives made numerous misrepresentations and omissions of material information and promises of improper benefits. The trustee also alleges that the NYSE, because of its own interest in preserving the capital of DGF Inc.,* concealed the conclusions of its own staff that Walston's capital would be completely depleted in eight months if the Perot Plan were adopted.

"* According to the trustee, the NYSE was interested in saving DGF Inc. because its liquidation would have made the Exchange Special Trust Fund liable to Perot on a $15 million note, and the Fund lacked funds sufficient to cover that amount" (4a-5a).

In the first six months of operation after the Perot Plan was implemented, Walston lost over $30 million and, as the NYSE had predicted, Walston was forced to liquidate its business. Arrangements were made in January, 1974 to dispose of the branch office network, and on March 27, 1974 Walston filed a petition for reorganization under Chapter XI of the Bankruptcy Act. On May 29, 1974 Walston was adjudicated a bankrupt and the Trustee was appointed.

Prior to the effectuation of the realignment agreements, Walston had equity of more than $30 million; at the time of its bankruptcy, it had assets of under $2 million against creditors' claims of over $75 million.

Based on "this sorry picture," the Trustee filed this suit in the United States District Court for the Southern District of New York on July 1, 1975 (5a, footnote omitted). On October 14, 1975 fifteen of the twenty defendants (the "Perot Group") moved for a stay pending arbitration.[1] Although the Trustee had not entered into any arbitration agreement, the Perot Group claimed that the Trustee was bound by arbitration agreements entered into by Walston, which designated tribunals from the NYSE or the American Stock Exchange, Inc. ("AMEX") as the arbitrators.

Nearly six months later, on April 12, 1975, the District Court granted the stay. Although recognizing that the stock exchange arbitration tribunals could not serve because of the appearance of bias, the district judge ruled that, unless the parties could agree otherwise, he would appoint the American Arbitration Association as the tribunal (15a-37a).

On January 25, 1977, the Second Circuit reversed (1a-14a). Writing for a unanimous court, Judge Feinberg concluded first that when a trustee sues to avoid fraudulent and preferential transfers under the Bankruptcy Act he stands in the shoes of creditors and is not subject to the arbitration agreements of the bankrupt:

> "These are statutory causes of action belonging to the trustee, not to the bankrupt, and the trustee asserts them for the benefit of the bankrupt's creditors, whose rights the trustee enforces. For example, if there had been no federal bankruptcy proceeding and if a creditor had independently asserted a claim under N.Y. Debt & Cred. Law § 278 to set aside a fraudulent transfer of assets the creditor would not have been subject to any arbitration agreement. Since the trustee stands in the creditor's shoes for this purpose, he too should not be compelled to arbitrate these claims" (9a; citations omitted).

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[1] The NYSE also moved for a stay pending arbitration, even though it admits it has no right to arbitration.

Second, the court concluded that the trustee's claims under the federal securities laws should not be arbitrated. The case concerns "one of the most celebrated brokerage house failures in the history of Wall Street" (10a; footnote omitted). The plaintiff is a bankruptcy trustee; unlike the usual corporate litigant, he employs no witnesses with knowledge of the facts and has few of the relevant records. At issue are federal statutes aimed at securities fraud. Under these circumstances, the policy of *Wilko* v. *Swan,* 346 U.S. 427 (1953), and its progeny in favor of determining securities laws disputes in court rather than in arbitration tribunals is fully applicable.

Although the Second Circuit had recognized a limited exception to the *Wilko* rule to permit arbitration of "intramural" disputes between stock exchange members in accordance with the self-regulatory policy set forth in Section 28(b) of the Securities and Exchange Act of 1934, that exception has no application to a "claim of wholesale fraud of institutional dimension, especially when raised by a trustee. . ." (12a).

Since the securities laws and Bankruptcy Act claims were not subject to arbitration, the Second Circuit held that the district court had erred in granting the stay.

DISCUSSION

The decision of the Second Circuit in this case is fully consistent with the decisions of this Court and of courts of appeals in other circuits. None of the questions of policy discussed in the petition and supporting brief actually arises in this case. None of the issues decided below is of sufficient importance to warrant review by this Court.

The Second Circuit's decision was an obviously correct resolution of an unusual fact situation; it did not announce a "nebulous" or "fluid" test which will multiply litigation in the federal courts; and there is no basis for imputing to it such disruptive consequences. Indeed, no trustee in bankruptcy has

ever been required to arbitrate a fraudulent or preferential transfer claim; no trustee in bankruptcy has ever been required to arbitrate a securities law claim; and no existing precedent is undercut by the decision below. In deciding this case, the Second Circuit left the law just where it found it. Accordingly, there is no basis for asking this Court to grant certiorari.

1. *There Is No Conflict With Any Decision Of This Court*

Petitioners claim that the decision below is in conflict with *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.,* 388 U.S. 395 (1967), a case involving only common law claims. They assert that *Prima Paint* holds that a court must grant a stay pending arbitration once the existence of an arbitration agreement is shown. However, this Court has recognized that arbitration of claims under federal statutes would in many situations be contrary to public policy and Congressional intent. *See Wilko* v. *Swan,* 346 U.S. 427 (1953) (Securities Act of 1933); *Alexander* v. *Gardner-Denver Co.,* 415 U.S. 36 (1974) (Title VII of the Civil Rights Act of 1964); *U.S. Bulk Carriers, Inc.* v. *Arguelles,* 400 U.S. 351 (1971) (seamen's wage law, 46 U.S.C. § 596).[2] The courts of appeals have reached similar conclusions in a number of cases arising under various federal statutes.[3] The *Prima Paint* case simply has no bearing on this case, which

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[2] *See also Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Ware,* 414 U.S. 117 (1973) (California Labor Code provision barring arbitration of wage claims not pre-empted by New York Stock Exchange arbitration rules promulgated as self-regulatory measures pursuant to Section 6 of the Securities Exchange Act of 1934). *Cf. Bernhardt* v. *Polygraphic Co.,* 350 U.S. 198, 203 (1956) (In a diversity case not involving interstate commerce, a federal court could not order arbitration if a state court would not, "[f]or the remedy by arbitration, whatever its merits or shortcomings, substantially affects the cause of action created by the State.")

[3] *See, e.g., Gutor International AG* v. *Raymond Packer Co.,* 493 F.2d 938 (1st Cir. 1974) (antitrust laws); *Greater Continental Corp.* v. *Schechter,* 422 F.2d 1100 (2d Cir. 1970) (Securities Exchange Act of 1934); *American Safety Equipment Corp.* v. *J.P. Maguire & Co.,*

alleges violations of no fewer than eight separate provisions of three federal statutes.

This Court has acknowledged that "[t]he nature of the tribunal where suits are tried is an important part of the parcel of rights behind a cause of action," and that a "change from a court of law to an arbitration panel may make a radical difference in ultimate result." *Bernhardt* v. *Polygraphic Co.*, 350 U.S. 198, 203 (1956). Accordingly, this Court has refused to enforce pre-existing arbitration agreements when disputes have arisen involving claims under federal statutes embodying significant federal policies.

The leading case on whether a plaintiff may be compelled to arbitrate federal statutory claims is *Wilko* v. *Swan*, where, as here, the plaintiff sought to recover for violations of the Securities Act of 1933. In holding that the non-waiver provision of Section 14 of the Securities Act[4] barred enforcement of

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391 F.2d 821 (2d Cir. 1968) (antitrust laws); *L.O. Koven & Brother, Inc.* v. *Steelworkers' Local 5767*, 381 F.2d 196 (3d Cir. 1967) (Bankruptcy Act); *Cobb* v. *Lewis*, 488 F.2d 41 (5th Cir. 1974) (antitrust laws); *Beckman Instruments, Inc.* v. *Technical Development Corp.*, 433 F.2d 55 (7th Cir. 1970), *cert. denied*, 401 U.S. 976 (1971) (patent law); *Helfenbein* v. *International Industries, Inc.*, 438 F.2d 1068 (8th Cir.), *cert. denied*, 404 U.S. 872 (1971) (antitrust laws); *A. & E. Plastic Pak Co.* v. *Monsanto Co.*, 396 F.2d 710 (9th Cir. 1968) (antitrust laws).

[4] Section 14, 15 U.S.C. § 77n, provides:

> "Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this title or of the rules and regulations of the Commission shall be void."

The Securities Exchange Act of 1934 contains a similar provision. Section 29(a) of the Securities Exchange Act, 15 U.S.C. § 78cc(a), provides:

> "Any condition, stipulation, or provision binding any person to waive compliance with any provision of this title or of any rule or regulation thereunder or of any rule of an exchange required thereby shall be void."

an arbitration agreement, this Court discussed the deficiences of the arbitration tribunal as a forum for resolution of federal securities law claims. Although the provisions of the Securities Act would apply in arbitration, their effectiveness would be "lessened in arbitration as compared to judicial proceedings":

> "This case requires subjective findings on the purpose and knowledge of an alleged violator of the Act. They must be not only determined but applied by the arbitrators without judicial instruction on the law. As their award may be made without explanation of their reasons and without a complete record of their proceedings, the arbitrators' conception of the legal meaning of such statutory requirements as 'burden of proof,' 'reasonable care' or 'material fact' . . . cannot be examined. Power to vacate an award is limited. . . . As the protective provisions of the Securities Act require the exercise of judicial direction to fairly assure their effectiveness, it seems to us that Congress must have intended § 14 . . . to apply to waiver of judicial trial and review." 346 U.S. at 435-37 (footnotes omitted).

The instant action is even less suited to arbitration than *Wilko*. Here, the unavailability of ordinary pretrial discovery—a deficiency of arbitration recently noted by this Court in *Alexander* v. *Gardner-Denver Co.*[5]—assumes greater than usual significance because the plaintiff is a trustee in bankruptcy. His access to evidence through informal means outside the court process is more limited than that of an ordinary litigant. As the Second Circuit stated:

> "Unlike an operating business, the trustee employs no witnesses with knowledge of the relevant facts, and he has almost none of the relevant records" (10a).

Accordingly, a bankruptcy trustee has particular need for discovery available in federal courts but not in arbitration.

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[5] 415 U.S. 36, 57-58 (1974).

Following the lead of *Alexander* v. *Gardner-Denver Co.*, the court below cited the Trustee's need for discovery as an additional reason for denying arbitration.

The court below drew its decisional principles from the relevant precedents of this Court and correctly decided the case before it. Instead of attacking the result reached in this case, petitioners have selected phrases from the opinion below, characterized them as the holdings of the court, and predicted for them a potential for mischief in other cases. Petitioners assert that the Second Circuit announced a "nebulous three-pronged test" requiring a "case-by-case" analysis which portends "expanded proceedural litigation" in the future (Petition 8, 10, 12). When the issue before the Second Circuit and the result reached are examined, it is clear that the decision below simply is not the reckless venture into uncharted waters which petitioners call it.

All that the court below was called upon to do was to apply to the Trustee's securities law claims either the well-established rule of *Wilko* v. *Swan* or a limited exception to that rule recognized in other Second Circuit cases. After analyzing the relevant statutes and policy considerations, the Second Circuit found that this Court's *Wilko* rule was applicable. Far from reaching a result inconsistent with a decision of this Court, the Second Circuit followed the controlling Supreme Court precedent. Petitioners' argument that the opinion below is in conflict with the obviously irrelevant *Prima Paint* case[6] demonstrates clearly the lack of merit in the petition.

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[6] While placing their principal reliance on *Prima Paint*, Petitioners half-heartedly claim that the decision below is also inconsistent with *Scherk* v. *Alberto-Culver Co.*, 417 U.S. 506 (1974). The claim is specious. A footnote to the *Scherk* majority opinion observed that one of the parties had argued that *Wilko* v. *Swan* should be given a narrow reading, but stated that the Court did not have to consider the argument because of its disposition of the case on other grounds.

2. There Is No Conflict With A Decision Of Another Circuit

The petition states that the decision below is in conflict with the First Circuit's decision in the *Revenue Properties Litigation Cases*, 451 F.2d 310 (lst Cir. 1971). However, the court in *Revenue Properties* reached the same result as a line of Second Circuit cases which the Second Circuit cited and distinguished in its opinion below.

Unlike the present action, all of these cases involved disputes between fellow stock brokers over a transaction in a publicly traded security in which they had participated in the ordinary course of their business. *See, e.g., Axelrod & Co.* v. *Kordich, Victor & Neufeld*, 451 F.2d 838 (2d Cir. 1971); *Brown* v. *Gilligan, Will & Co.*, 287 F. Supp. 766 (S.D.N.Y. 1968). *See also Coenen* v. *R.W. Pressprich & Co.*, 453 F.2d 1209 (2d Cir.), *cert. denied*, 406 U.S. 949 (1972) (plaintiff joined stock exchange after transaction at issue). Such routine intramural disputes have been held subject to arbitration even where charges of securities fraud are made because of the belief that arbitration under stock exchange auspices may assist in maintaining good relations between exchange members. As the Second Circuit stated in *Coenen, supra,*

> "the common, garden variety of alleged scheme to defraud in a security transaction . . . is precisely the sort of breeder of ill-feeling between members of the Exchange it was intended to keep out of the courts." 453 F.2d at 1215.

Here, in contrast, the plaintiff is not a member of any exchange but a statutorily created representative of creditors; the case does not involve a run of the mill securities trade but "a claim of wholesale fraud of institutional dimension" resulting in the destruction of one of the largest securities firms in the country; and the New York Stock Exchange is not standing by as a neutral arbiter ready to mediate the dispute, but is a named defendant, charged with having a financial interest in the

transaction and with participating actively in the misconduct alleged. Thus, the Second Circuit reached a different result from *Revenue Properties,* not because it regarded the case as wrongly decided, but because it found material distinctions between the facts of that case and the facts of this one.

The same facts which distinguish this case from *Revenue Properties* also make it clear that the public policy arguments advanced by the NYSE against the decision below simply do not apply to this case. The NYSE asserts that the issue in this case is whether arbitration of disputes between NYSE *members* involving allegations of securities law or Bankruptcy Act violations may be required. Yet this dispute is between a bankruptcy trustee and twenty defendants, none of which is presently a member of the NYSE. The NYSE characterizes the decision below as an erosion of the self-regulatory process. Yet the self-regulatory authority is itself a defendant in the suit and has been disqualified from mediating the dispute. The NYSE argues that arbitration would further the goal of fostering harmonious relations between NYSE members. Yet none of the parties to the case is an NYSE member. And the NYSE states that experts from the industry would do a better job of trying this case than a federal court. Yet the arbitrators in this case could not have been drawn from the exchanges.

In a proper case, the NYSE's arguments might have been entitled to some weight, but they are quite beside the point under the circumstances presented here. There is no legitimate self-regulatory policy which would warrant "muffling" this dispute "in the cloakroom of arbitration." *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Ware,* 414 U.S. 117, 136 (1973).

3. *No Significant Issue Of Bankruptcy Law Was Decided Below*

Seizing upon the statement in the opinion below that "[t]his case raises significant questions regarding the interplay between the powers of a bankruptcy trustee and the United States Arbitration Act . . ." (3a), petitioners leap to the con-

clusion that the Second Circuit has decided an important question of bankruptcy law which should be considered by this Court. Petitioners have confused the issues raised below with the issues actually decided by the court of appeals. Noting that the parties' arguments raised "a number of substantial questions," the Second Circuit found it "not . . . necessary to consider most of them" (8a; footnote omitted).

The Second Circuit never even reached the issue petitioners raise here of whether a trustee is bound by the bankrupt's arbitration agreements when he brings suit as successor to the bankrupt.[7] The Trustee is suing not only on claims which had been owned by the bankrupt prior to bankruptcy but also on claims which had been owned by the bankrupt's creditors. The Second Circuit's opinion considered the effect of the Bankruptcy Act only on claims in which the Trustee asserts the rights of creditors.

The claims of these creditors are set forth in seven counts of the complaint which seek recovery of voidable preferences and fraudulent transfers under Sections 60, 67 and 70 of the Bankruptcy Act. When a trustee in bankruptcy sues upon claims such as these, he is standing in the shoes of creditors and has all

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[7] Even if the Second Circuit had placed its decision for the Trustee on this ground, petitioners would have had no basis for seeking this Court's review. Petitioners' claim that the Trustee would be bound to carry out such agreements has no support in precedent or logic. Section 70b of the Bankruptcy Act, 11 U.S.C. § 110(b), relieves the trustee from any obligation to perform executory contracts of the bankrupt unless he has specifically elected to assume them. The courts which have considered the question uniformly have ruled that a trustee or debtor-in-possession may not be required to perform the arbitration clause in a contract that has been rejected or disaffirmed under the Bankruptcy Act. *See Johnson* v. *England,* 356 F.2d 44 (9th Cir.), *cert. denied,* 384 U.S. 961 (1966); *In re Muskegon Motor Specialties Co.,* 313 F.2d 841 (6th Cir.), *cert. denied,* 375 U.S. 832 (1963); *Local 30, ILGWU* v. *Hers Apparel Industries, Inc.,* 76 CCH Lab. Cas. ¶10,733 (S.D.N.Y. 1975) (not officially reported); *Allegaert* v. *Mendiburu,* F-75-36-Civil (E.D. Cal. 1975) (not officially

their rights and powers; defenses which would have been good against the bankrupt but not against its creditors will not bar the trustee's recovery. *See, e.g., Buttrey* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 410 F.2d 135 (7th Cir.), *cert. denied*, 396 U.S. 838 (1969); *Schneider* v. *O'Neal*, 243 F.2d 914 (8th Cir. 1957). Since a creditor suing a transferee could not be forced to arbitrate on the basis of an arbitration agreement between the transferee and the bankrupt, neither can the trustee be forced to arbitrate when he is standing in the shoes of creditors under Sections 60, 67 and 70 of the Bankruptcy Act. *See Johnson* v. *England*, 356 F.2d 44 (9th Cir.), *cert. denied*, 384 U.S. 961 (1966).

Having found that most of the claims in the complaint—the Bankruptcy Act and securities laws counts—were not arbitrable, the Second Circuit concluded that the case

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reported). *See also Knickerbocker Agency* v. *Holz*, 4 N.Y.2d 245, 173 N.Y.S.2d 602, 149 N.E.2d 885 (1958).

The cases cited by petitioners lend no support to their position. Thus, petitioners mis-cite *Bank of Marin* v. *England*, 385 U.S. 99 (1966), for the proposition that a trustee is "bound" by the contracts of the bankrupt. This is true only in the sense that the trustee must recognize a claim for breach of contract in determining what claims against the estate are allowable; the case nowhere states or implies that a trustee must specifically perform the bankrupt's contracts. Similarly, petitioners mis-cite *Truck Driver's Local 807* v. *Bohack Corp.*, 541 F.2d 312 (2d Cir. 1976), for the proposition that a bankruptcy trustee may not "unilaterally" disavow the bankrupt's arbitration contract. That case involved a Chapter XI debtor-in-possession. Unlike a trustee in bankruptcy, a debtor-in-possession must obtain bankruptcy court approval in order to reject any executory contract. *See* Bankruptcy Act § 313(1), 11 U.S.C. § 713(1); Bankruptcy Rule 11-53. In a straight bankruptcy proceeding, the trustee may reject or disaffirm executory contracts without any court approval whatever. *See* Bankruptcy Act § 70b, 11 U.S.C. § 110(b); Bankruptcy Rule 607. Here, it is quite clear that the Trustee rejected all of the contracts at issue, so there is no basis for requiring him to perform the arbitration clauses in them.

should proceed in federal court without deciding whether the remaining counts standing alone would have warranted a stay pending arbitration. Thus, the question whether a trustee would be bound by a bankrupt's arbitration agreement when suing on a state law claim inherited from the bankrupt is not presented by this record. The Second Circuit decided the case on independent grounds fully supported by reason, precedent, and statute.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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